



July 18, 2001

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Room 501  
Dallas, Texas 75201

OR2001-3117

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149499.

The Dallas Police Department (the "department") received a request for "copies of any Internal Affairs investigations or other internal discipline involving PO Ryan T. Jones #6802 since Jan. 1, 1998." You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We first note that section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted documents contain information that is confidential under the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

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<sup>1</sup>We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The information you have marked as subject to the MPA may only be released in accordance with that statute.

Section 552.101 also incorporates the doctrine of common law privacy. For information to be protected from public disclosure under the common law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987). We have marked the information in the submitted documents that must be withheld under section 552.101 in conjunction with common law privacy.

We also note that some of the information in the submitted personnel file is protected by section 552.117(2) of the Government Code. The city must withhold those portions of the records that reveal a peace officer's home address, home telephone number, and social security number, and whether the officer has family members, regardless of whether the

peace officer complies with section 552.024.<sup>2</sup> However, section 552.117(2) protects only the information of a peace officer in the context of his role as a "peace officer" and not as a "suspect" or "complainant" in a criminal investigation. Thus, the department must withhold the information you have marked to be withheld under section 552.117(2), except as we have indicated. We have also marked additional information that must be withheld under section 552.117(2).

Section 552.119 excepts from public disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer, unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). The submitted information includes photographs of peace officers, and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consents to disclosure. Thus, the city must withhold the photographs depicting peace officers that you have marked.

Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold under section 552.130 the Texas driver's license, license plate, and vehicle identification numbers appearing in the submitted information.

To summarize, medical records may only be released in accordance with the MPA. A portion of the information is excepted from disclosure under section 552.101 in conjunction with common-law privacy. Information pertaining to the peace officer's home address, home telephone number, and social security number, and information as to whether the officer has family members, must be withheld under section 552.117(2). The photographs of peace officers must be withheld under section 552.119. The Texas driver's license, license plate,

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<sup>2</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

and vehicle identification numbers must be withheld under section 552.130. The remainder of the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 149499

Enc. Submitted documents

c: Mr. Jason Sickles  
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10111 North Central Expressway  
Dallas, Texas 75231  
(w/o enclosures)